

Title	Appellate Procedure: Filing Brief by Mail (amend Cal. Rules of Court, rule 40(k))
Summary	This proposal would amend rule 40(k) to replace the option of filing an appellate brief by certified mail with the option of filing the brief by priority mail.
Source	Appellate Advisory Committee Justice Joyce L. Kennard, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>Rule 40(k) of the California Rules of Court, defines the date of filing of an appellate brief. It provides, among other things, that a brief is timely if it is sent by certified or express mail or by overnight carrier on the date the brief is due. This provision gives appellate litigants who cannot easily hand-deliver their briefs to the court additional time to complete these briefs; they can mail a brief on the due date rather than having to mail it days ahead so that it will arrive at the court before the time for filing expires. However, certified mail is relatively slow; briefs sent by certified mail can take up to a week or more to reach the court. As a result of this slow delivery, some briefs sent by certified mail may not reach the court until after the clerk has sent the party a notice of failure to timely file the brief or, in the case of reply briefs, until after the court has held oral argument.</p> <p>The Appellate Advisory Committee proposes that the option of filing the brief by certified mail be replaced with an option of using Priority Mail. Information provided by the U.S. Postal Service indicates that Priority Mail is typically delivered in one to three days, considerably faster than certified mail. Priority Mail also costs about the same as or less than certified mail. Priority Mail under a pound costs \$3.85; certified mail up to 13 ounces costs about \$3.13 for the first class postage and an additional \$2.30 for the certification. Thus, replacing certified mail with Priority Mail will preserve a low cost delivery option under rule 40(k). If proof of the date of mailing (beyond a postmark) is needed, the Postal Service will now provide a Certificate of Mailing for an additional \$.90.</p>
	Attachments

Rule 40 of the California Rules of Court would be amended, effective January 1, 2005, to read:

Rule 40. Briefs by parties and amici curiae

(a)–(j) ***

(k) “Date of filing” of a brief (as defined in subdivision (i)) is the date of delivery to the clerk’s office during normal business hours. The brief is timely, however, if the time for its filing had not expired on the date of its mailing by ~~certified~~ priority or express mail as shown on the ~~postal receipt or postmark or certificate of mailing provided by the U.S. Postal Service~~, or the date of its delivery to a common carrier promising overnight delivery as shown on the carrier’s receipt.

(l) ***